

PATENT

U.S. Patent Serial No. 09/606,629

#4

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors: Heinicke et al.

Serial No.: 09/606,629

Filed: June 29, 2000

For: CONTROLLED ABSORPTION DILTIAZEM
PHARMACEUTICAL FORMULATION

Group Art Unit: 1615



ASSOCIATE POWER OF ATTORNEY

ASSISTANT COMMISSIONER
FOR PATENTS
Washington, D.C. 20231

SIR:

The undersigned, being an attorney-of-record in this application,
hereby appoints the following as associate attorney:

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to prosecute this application and to transact all business in the Patent and
Trademark Office connected therewith.

Respectfully submitted,

Dated: 1/24/01


E. Brendan Magrab
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FILED

PUREPAC PHARMACEUTICAL CO., :
Plaintiff,
v.
ANDRX PHARMACEUTICALS, INC., :
Defendant.

Civil Action No. 00-CV-1224

JUDGE BARTLE

JUL 26 2000
MICHAEL E. KUNZ Clerk
By _____ B.P. Clerk

FEB 08 2001

RECEIVED
U.S. DISTRICT COURT CLERK'S OFFICE
ELECTRONIC FILING CENTER 1600ZAMSTIPULATED PROTECTIVE ORDER

Plaintiff, Purepac Pharmaceuticals, Inc., and defendant, Andrx Pharmaceuticals, Inc., (collectively, "the Parties") recognize that discovery in this action will likely involve the disclosure of information that includes trade secrets or other confidential research, development, or business and financial information considered by the Parties to be proprietary. It is therefore stipulated between the Parties, through their respective counsel of record, the Honorable Court consenting, that the following Protective Order be entered:

1. All documents, testimony or other information obtained through or in connection with the course of formal discovery in this proceeding (including deposition testimony, documents produced by the parties to this action or by any third party) shall be subject to this Protective Order upon any party's designation of such documents or other information as "Confidential" or "Confidential Attorneys' Eyes Only." The parties will make such designations only if they have a good faith belief that the documents or information so designated require the protections

required by such designation. Such designation shall be made in accordance with the following procedures:

- (a) Any party to this Protective Order may unilaterally designate documents, testimony, or other information as "Confidential" or "Confidential Attorneys' Eyes Only," but such designation must be made for deposition testimony on the record during the deposition or in writing within thirty (30) days after the receipt of the deposition transcript (n, in the case of documents or other information, in writing concurrently with the production of such documents or other information;
- (b) A party may designate as "Confidential" those materials, whether in written, oral, electronic, graphic, audiovisual, or any other form, that the party believes in good faith contain confidential information used by it in, or pertaining to, its business and that is not generally known, and which that party would normally not reveal to third parties or, if disclosed, would require such third parties to maintain in confidence;
- (c) A party may designate as "Confidential Attorneys' Eyes Only" such highly confidential materials as contain particularly sensitive technical information relating to research for and production of current products, technical, business and research information regarding future products, highly sensitive financial information, and marketing plans and forecasts, customer lists, pricing data, cost data, customer orders, customer quotations, and any pending or abandoned patent applications, foreign or domestic, as well as other such documents, information or materials that relate to other proprietary information that the designating party

reasonably believes is of such nature and character that disclosure of such information would be harmful to the designating party.

(d) Any party receiving information pursuant to this Protective Order may at any time object to the designation of information as "Confidential" or "Confidential Attorneys' Eyes Only" by giving written notice of such objection to the designating party. If the designating party responds in writing within five business days after receiving such notice that the designation stands, the objecting party may seek an order from the Court removing the designation or to reduce the designation from "Confidential Attorneys' Eyes Only" to "Confidential." If, within five business days following receipt of notice of objection, the designating party does not respond in writing to the objecting party, the information shall not be designated as "Confidential" or "Confidential Attorneys' Eyes Only" under this Protective Order. With respect to documents that in the opinion of counsel may be necessary for use at depositions or trial, objections to the "Confidential Attorneys' Eyes Only" designation may be made by telephone and, in the event the dispute is not resolved, the parties may immediately seek relief from the Court.

(e) Any party may at any time withdraw its designation of "Confidential" or "Confidential Attorneys' Eyes Only" by giving written notice of such withdrawal to the other party;

(f) Any party may change its designation from "Confidential Attorneys' Eyes Only" to "Confidential" by giving written notice to the other party;

(g) Designations and changes in designations shall be effective upon receipt by the other party;

(h) Any documents or other information that have been disclosed by either party to the other may not thereafter be designated "Confidential Attorneys' Eyes Only" under this Protective Order, and,

(i) Documents made public by the designating party before or after the date of this Order shall not be subject to this Order notwithstanding their designation as either "Confidential" or "Confidential Attorneys' Eyes Only."

2. Documents or other information designated "Confidential" may be disclosed and

accessible only as follows:

(a) To the Court, attorneys of record, associated attorneys for the parties, including in-house counsel, judicial personnel, stenographers and support personnel for all of the foregoing, to whom it is reasonably necessary that the material be shown for the purposes of this proceeding,

(b) To employees, officers, and directors of the parties to this action to whom it is reasonably necessary that the material be shown for purposes of this proceeding; provided, however, that such employee, officer or director agrees to be bound by this Protective Order pursuant to Paragraph 4 below and agrees not to use the information for any business purpose;

(c) To other persons not covered by Paragraphs 2(a) or 2(b) above, who are retained by a party or its attorneys of record in this action to assist in this proceeding, such as independent experts and consultants and the employees of such experts and consultants, and to any third-party defendants; provided that each person to whom disclosure is made pursuant to this Paragraph 2(c) agrees to be bound by this Protective Order pursuant to Paragraph 4 below,

(d) To the author or any recipient of the documents as reflected on the face of the document; and

(e) To such other persons as hereafter may be designated by written agreement between the parties to this action or by Order of the Court.

3. Any party may also designate documents or other information as "Confidential Attorneys' Eyes Only" by so designating it or marking it in good faith. Documents or other information designated "Confidential Attorneys' Eyes Only" may be disclosed and accessible only as follows:

(a) To the Court, attorneys of record, associated attorneys for the parties, Brendan E. Magrab, Esq., Andrew Berlin, Esq., Scott Lorin, Esq., Herschel E. Sparks, Esq., judicial personnel, stenographers and support personnel for all of the foregoing, to whom it is reasonably necessary that the material be shown for the purposes of this proceeding;

(b) To other persons not covered by Paragraphs 3(a) above, who are retained by a party or its attorneys of record in this action to assist in this proceeding, such as

independent experts and consultants and the employees of such experts and consultants, and to any third-party defendants; provided that each person to whom disclosure is made pursuant to this Paragraph 3(b) agrees to be bound by this Protective Order pursuant to Paragraph 4 below. It is a condition to such disclosure with respect to outside experts and consultants that counsel exercise reasonable due diligence to confirm that any such expert and/or consultant is not a person or entity who reasonably may use "Confidential Attorneys' Eyes Only" material to gain an economic or business advantage against the designating party; and

(c) To the author or any recipient of the documents as reflected on the face of

the document, and

(d) To such persons as hereafter may be designated by written agreement

between the parties to this action or by Order of the Court

4. Except by written consent of the producing party, each person to whom documents or other information designated as "Confidential" or "Confidential Attorneys' Eyes Only" is disclosed hereunder, other than the Court, attorneys of record, associated attorneys for the parties, judicial personnel, stenographers and support personnel for all of the foregoing, to whom it is reasonably necessary that the material be shown for the purposes of this proceeding, shall, prior to the time he or she receives the information in any form whatsoever, be provided with a copy of this Protective Order and shall certify that he or she has read the Protective Order, fully understands its terms, and agrees to be bound by its terms by signing an Acknowledgment of Protective Order and Agreement to be Bound ("Agreement") as set forth in Exhibit A.

Counsel making disclosure to any such person shall retain the original executed copy of the Agreement, and shall, within five business days of its execution, serve a copy on counsel for the producing party. Prior to disclosing any information designated as "Confidential" or "Confidential Attorneys' Eyes Only" to any proposed expert or outside consultant, the disclosing party's counsel shall determine that disclosure to the expert or outside consultant of particular information designated as "Confidential" or "Confidential Attorneys' Eyes Only" is, in that counsel's good faith judgment, necessary to the party to prosecute or defend this action.

Furthermore:

- (a) Absent agreement of the designating party or order of the Court for good cause shown, disclosure of information designated as "Confidential" or "Confidential Attorneys' Eyes Only" shall not be made to any expert who is currently, or who is known or reasonably believed by the disclosing party to be or intending to become, an officer, director, employee, consultant or agent of any entity that the disclosing party knows, or in the exercise of reasonable care should know, intends to be in the business of manufacturing, marketing, promoting or advertising a product or service in competition with the designating party.
- (b) Before any access to information designated "Confidential" or "Confidential Attorneys' Eyes Only" is given, the disclosing party shall identify the proposed expert to the designating party, and shall provide his or her written curriculum vitae and a general description of the information designated as "Confidential" or "Confidential Attorneys' Eyes Only" proposed to be shown to the expert. Thereafter, the designating party shall have 10 business days to advise the disclosing party of any objection to the disclosure of "Confidential"

or "Confidential Attorneys' Eyes Only" to the proposed expert. If the designating party so objects, no disclosure shall be made except to further written agreement by the designating party or order of the Court upon notice for good cause shown.

(c) Prior to disclosure, each expert accepted by the designating party must agree to be bound by the terms of this Order by executing the Agreement annexed hereto as Exhibit A. Counsel making the disclosure shall retain the original executed copy of the Agreement, and shall provide a copy to the designating party.

5. Inadvertent production of any document which a party or non-party later claims should not have been produced because of a privilege, including but not limited to attorney-client or work product privilege ("Inadvertently Produced Privileged Document"), will not be deemed to waive any privilege. A party or non-party may request the return of any Inadvertently Produced Privileged Document. A request for the return of an Inadvertently Produced Privileged Document shall identify the document inadvertently produced and the basis for withholding such document from production. If a party or non-party requests the return, pursuant to this paragraph, of any Inadvertently Produced Privileged Document then in the custody of another party or non-party, such receiving party shall within ten (10) days return to the requesting party or non-party the Inadvertently Produced Privileged Document and all copies thereof. The party returning such material may then move the Court for an order compelling production of the material, but said party shall not assert as a ground for entering such an order the fact or circumstances of the inadvertent production.

6. At the conclusion of or upon other final termination of this proceeding, all documents, testimony, and other information received pursuant to the provisions of this Protective Order (and all copies, abstracts, compilations, extracts, and complete or partial summaries of the documents and other information) shall be promptly destroyed. The provisions of this Protective Order insofar as they restrict the communication and use of "Confidential" or "Confidential Attorneys' Eyes Only" documents, testimony, or other information shall, absent written permission of the designating party or further order of the Court, continue to be binding on all parties subject to the terms of the Protective Order, notwithstanding the entry of any award or dismissal herein.

7. The documents, testimony and other information designated as "Confidential" or "Confidential Attorneys' Eyes Only," may be used by the receiving party solely for the purposes of this litigation and for no other purpose whatsoever. The designation of documents, testimony, or other information as "Confidential" or "Confidential Attorneys' Eyes Only" in accordance with this Protective Order is intended solely to facilitate the preparation, trial and eventual disposition of this action. Treatment by counsel or the parties of such designated material shall not be construed as an admission by any party that the designated document, testimony, or other information contains trade secrets or proprietary information, or is otherwise confidential information. Conversely, a failure to so designate any document, testimony or other information shall not constitute a waiver of any party's claims either within or outside this action that any such documents or other information do contain trade secrets, proprietary information, or is otherwise confidential information. No party to this Protective Order shall be obligated to

challenge the propriety of any designation, and the failure to do so shall not preclude any subsequent challenge to the propriety of such designation.

8. Any document(s) filed or lodged with the Court that reveals any information contained in the documents, testimony, or other information appropriately designated as "Confidential" or "Confidential Attorneys' Eyes Only" shall be filed under seal and made available only to persons authorized by the terms of this Protective Order.

9. This Protective Order may be modified by further order of this Court or by agreement of the parties or their counsel, subject to the approval of the Court, provided that any such agreement be in the form of a stipulation that shall be filed with the Court and made a part of the record in this case.

10. Notwithstanding the foregoing provisions, this Protective Order shall be without prejudice to the right of any party to challenge the propriety of discovery on other grounds, and nothing contained herein shall be construed as a waiver of any objection that might be raised as to the admissibility at trial of any evidentiary material. The parties reserve all rights to apply to the Court for an order modifying this Protective Order or seeking further protection.

11. This Protective Order shall not preclude any party from introducing "Confidential" or "Confidential Attorneys' Eyes Only" documents or information into evidence at an evidentiary hearing.

12. This Protective Order shall not preclude the parties to this action from agreeing in writing to an alternative procedure for any particular documents or information.

13. The Court retains the right to allow disclosure of any information or documents designated as "Confidential" or "Confidential Attorneys' Eyes Only" pursuant to this Stipulated Protective Order or to modify this Stipulated Protective Order at any time in the interest of justice.

14. The terms of the Protective Order shall be effective upon execution by counsel for the parties, subject to modification by the Court.

Dated: July 26, 2000

SO ORDERED:

Stephen R. Bartlett
United States District Judge

Consented To:

Stephen P. White
Attorney for Plaintiff

ENTERED: 7-26

CLERK OF COURT

John J. Connaughton
Attorney for Defendant

COPIES BY MAIL ON:

To:

S. White, M. Andres
Platzer

COPIES BY FAX ON:

To:

7-26-00

EXHIBIT "A"

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PUREPAC PHARMACEUTICAL CO.,

Plaintiff :

v.

Civil Action No. 00-CV-1224

ANDRX PHARMACEUTICALS, INC.,

JUDGE BARTLE

Defendant :

ACKNOWLEDGMENT OF PROTECTIVE
ORDER AND AGREEMENT TO BE BOUND

In consideration of the disclosure to me of certain information which is subject to a protective order of this Court, I _____ state as follows:

1. That I reside at _____ in the city of _____ and state of _____ and county of _____;

2. That I have read and understand the Stipulated Protective Order in this action;

3. That I agree to comply with and be bound by the provisions of the Stipulated Protective Order. I will hold in confidence, will not disclose to anyone not qualified under the Stipulated Protective Order, and will use only for purposes set forth in the Stipulated Protective

Order any "Confidential" or "Confidential Attorneys' Eyes Only" information which is disclosed to me.

4. That I understand that if I violate the terms of the Protective Order, I may be subject to an enforcement proceeding before this Court; and
5. That I agree to submit myself to the personal jurisdiction of this Court in connection with any proceedings concerning the Protective Order.

(Signature of individual to whom disclosure will be made)